

REMARKS

Applicant has carefully reviewed the office action mailed February 27, 2006 and offers the following remarks.

Claims 1, 2, 5-21, and 24-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mousseau et al. (hereinafter "Mousseau") in view of McConnell et al. (hereinafter "McConnell"). Applicant respectfully traverses.

Initially, Applicant notes that Mousseau only qualifies as prior art if it is entitled to the filing date of its provisional application; that is, the provisional application must properly support the subject matter relied upon to make the rejection in compliance with 35 U.S.C. § 112, first paragraph. MPEP § 2136.03. Applicant submits that the Examiner has failed to make a *prima facie* case showing that the provisional application properly supports the subject matter relied upon in the published application to make the rejection in compliance with 35 U.S.C. 112, first paragraph. Therefore, Applicant requests that if the Examiner continues to assert the Mousseau reference, then the Examiner must point out with particularity where in the provisional application support may be found for the rejection.

In any event, even if the Mousseau reference is entitled to the filing date of the provisional application, 35 U.S.C. § 102(e) requires that the invention be "...described in (1) an application for patent, published under section 122(b), by another filed in the United States **before the invention by the applicant for patent**" (emphasis added). However, Applicant conceived of the present invention prior to the filing date of Mousseau's provisional application to which the published application claims priority. As such, Mousseau does not qualify as prior art under § 102(e).

In order to establish that Mousseau does not qualify as prior art under § 102(e), Applicant herein presents the Declarations of Applicant's representative, Benjamin S. Withrow, and the inventor, Dany Sylvain, under 37 C.F.R. § 1.131, illustrating conception of the present invention prior to the filing date of the provisional to which the published Mousseau application claims priority. Based on the Declarations, Applicant asserts that the present invention was conceived of as early as August 22, 2003, and certainly no later than November 6, 2003. (See Declaration of Benjamin S. Withrow, Paragraphs 4-8; and Declaration of Dany Sylvain, Paragraphs 3-8). Further, the declaration shows that from a date prior to November 20, 2003, diligent action was taken by Applicant's representative, Benjamin S. Withrow, the inventor, Dany Sylvain, and the

assignee of the present application to constructively reduce the invention to practice through the filing of the instant patent application on November 26, 2003. (See Declaration of Benjamin S. Withrow, Paragraphs 6-14; and Declaration of Dany Sylvain, Paragraphs 7-12). The earliest possible priority date of Mousseau's published application is the filing date of the provisional application, November 20, 2003. Since this declaration shows that the date of invention for the present application was prior to November 20, 2003 and that diligent action was taken before November 20, 2003 through the filing of the present application, Mousseau does not qualify as prior art under 35 U.S.C. § 102(e). As such, the rejection of claims 1, 2, 5-21, and 24-39 as unpatentable over Mousseau in view of McConnell is improper and should be withdrawn. Applicant reserves the right to address McConnell in the future if required.

Claims 3, 4, 22, and 23 were objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form. Since the rejection of claims 1, 2, 5-21, and 24-39 as unpatentable over Mousseau in view of McConnell is improper, the objection to dependent claims 3, 4, 22, and 23 is moot. As such, claims 3, 4, 22, and 23 are allowable. Applicant reserves the right to address McConnell in the future if required.

In view of the discussion above, claims 1-39 are allowable. Reconsideration is respectfully requested. If any issues remain, the Examiner is encouraged to contact the undersigned attorney of record to expedite allowance and issuance of the present application.

<p>CERTIFICATE OF TRANSMISSION I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:</p> <p>Examiner: <u>Nguyen, Khai Minh</u> Art Unit: <u>2687</u> Fax: <u>571-273-8300</u></p> <p><u>Michelle Heymann</u> Name of Sender</p> <p><u>Michelle Heymann</u> Signature</p> <p><u>5-30-06</u> Date of Transmission</p>

Respectfully submitted,

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